

### **REMARKS**

Claims 1-68 remain pending in the application, with claims 11-23, 34-46, 48 and 49 withdrawn from consideration because of a restriction issued by the Examiner.

#### **35 USC 112, Second Paragraph Rejection**

The Examiner rejected claims 1-10, 24-33, 47 and 50-68 under 35 USC 112, second paragraph as allegedly being indefinite. In particular, the Examiner alleged that the recited "wherein the network services are performed without relying on either a client and server" is a negative limitation. Claims 1-10, 24-33, 47 and 50-68 are amended herein to recite "wherein the network services are performed without relying on either a client application and a server application". The Applicants believe the Examiner's rejection would apply to the amended claims also. Thus, the Applicants still respond herein to the Examiner's rejected of claims 1-10, 24-33, 47 and 50-68 under 35 USC 112, second paragraph.

The Examiner alleged a negative limitation is considered indefinite when it is an attempt to claim the invention by excluding what the inventors did not invent rather than distinctly and particularly point out what they did invent as held in *In re Schechter*, 205 F.2d 185, 98 USPQ 144 (CCPA 1953). The Examiner alleged that merely claiming that the transport protocol is not done by the client/server attempts to exclude what the inventors did not invent and therefore is considered indefinite. The Examiner directed the Applicants to MPEP 2173.05(i). The Applicants respectfully disagree.

MPEP 2173.05(i) states "The current view of the courts is that there is nothing inherently ambiguous or uncertain about a negative limitation. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 U.S.C. 112, second paragraph." Moreover, MPEP 2173.05(i) states that some older cases were critical of negative limitations because they tended to define the invention in terms of what it was not, rather than pointing out the invention, such as the

*Schechter* case cited by the Examiner. However, the Examiner has apparently failed to read the entire section of MPEP 2173.05(i) that cites a more recent case that apparently overturns the *Schechter* decision. A claim which recited the limitation "said homopolymer being free from the proteins, soaps, resins, and sugars present in natural Hevea rubber" in order to exclude the characteristics of the prior art product, was considered definite because each recited limitation was definite. In *re Wakefield*, 422 F.2d 897, 899, 904, 164 USPQ 636, 638, 641 (CCPA 1970). In addition, the court found that the negative limitation "incapable of forming a dye with said oxidized developing agent" was definite because the boundaries of the patent protection sought were clear. In *re Barr*, 444 F.2d 588, 170 USPQ 330 (CCPA 1971). Thus, *Barr* having a similar claim to *Schechter* was found to be definite with a recited negative limitation.

Claims 1-10, 24-33, 47 and 50-68 meet all of the requirements 35 USC 112, second paragraph. The Applicants respectfully request that the rejection of claims 1-10, 24-33, 47 and 50-68 under requirements 35 USC 112, second paragraph be withdrawn.

**Claims 1-6, 8, 24-29, 31, 47 and 50-62 over Matsuda in view of Atkinson**

In the Office Action, claims 1-6, 8, 24-29, 31, 47 and 50-62 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent Application Publication No. 2002/0133573 to Matsuda et al. ("Matsuda") in view of U.S. Patent No. 5,511,122 to Atkinson et al. ("Atkinson"). The Applicants respectfully traverse the rejection.

Claims 1-6, 8, 24-29, 31, 47 and 50-62 recite a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client application and a server application.

The Examiner previously acknowledged that Matsuda fails to disclose intelligent messaging network servers that use a transport protocol that provides for at least one of message segmentation and reassembly without

relying on either a client and server. However, the Examiner now alleged Matsuda discloses use of a TCP/IP network (see Office Action, page 4). The Examiner alleged that accompanying RFC 791 "Transmission Control Protocol" allegedly "discloses the network has the ability to provide ACK and NACK service on page 20; message retries on page 4: section 'Reliability'; message duplication detection on page 4: section 'Reliability'; Message segmentation is disclosed as shown by accompanying REF 791 'Internet Protocol', pages 35-36 discuss fragmentation of a datagram" (see Office Action, page 4).

Although RFC 791 appears to disclose various features associated with IP protocol, NONE of those features are disclosed as being performed without relying on either a client application and a server application. In fact, Applicants' specification at page 3, line 22-page 4, line 7 acknowledged that IP protocol has such features. However, IP conventionally relies on a client application and a server application for the recited services, i.e., message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service. Applicants' claimed features overcome reliance on a client application and a server application to perform such functions. RFC 791 fails to disclose or suggest the claimed features having such benefits.

The Examiner acknowledged that Matsuda fails to disclose a transport protocol used within an intelligent messaging network that provides for message segmentation and reassembly without relying on a client or server (see Office Action, page 5). The Examiner alleged that Atkinson discloses such a feature in Fig. 3, items 18 and 32 and that it would have been obvious to modify Matsuda with such a feature to arrive at the claimed features. The Applicants respectfully disagree.

Atkinson's step 18 of Fig. 3 discloses a subnet that processes data into packets or fragments which are subnetwork specific (See col. 9, lines 9-11). Step 32 performs transmission from a gateway of a subnetwork to a second gateway of a second subnetwork (See Atkinson, col. 9, lines 42-46). In most cases currently, reassembly only occurs at the destination node, with

intermediate nodes such as routers or gateways do not currently pay this cost (See Atkinson, col. 11, lines 46-48).

Thus, Atkinson appears to disclose a subnet that processes data into packets. However, Atkinson fails to disclose or suggest any other network overhead functions being performed by the subnet with packet re-assembly being performed by a destination node application, i.e., a client application or a server application. Thus, Atkinson still relies on a destination node application to re-assemble packets. Atkinson fails to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service **without relying on either a client application and a server application**, as recited by claims 1-6, 8, 24-29, 31, 47 and 50-62.

Matsuda in view of Atkinson would still fail to disclose or suggest an intelligent messaging network server that uses a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service **without relying on either a client application and server application**, as recited by claims 1-6, 8, 24-29, 31, 47 and 50-62.

A benefit of an intelligent messaging network server that uses a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service **without relying on either a client and server** is, e.g., reducing overhead associated with a client application and a server application. Conventionally, client applications and server applications have the burden of message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service. However, removing burdens from client applications and server applications eliminates network traffic associated with sending messages to clients and servers to perform such functions. The cited prior art fails to disclose or suggest the claimed features having such benefits.

Accordingly, for at least all the above reasons, claims 1-6, 8, 24-29, 31, 47 and 50-62 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

**Claims 7, 9, 10, 30, 32 and 33 over Matsuda in view of Bell**

In the Office Action, claims 7, 9, 10, 30, 32 and 33 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Matsuda in view of U.S. Patent No. 6,044,081 to Bell et al. ("Bell"). The Applicants respectfully traverse the rejection.

Claims 7, 9, 10, 30, 32 and 33 are dependent on claims 1 and 24 respectively, and are allowable for at least the same reasons as claims 1 and 24.

Claims 7, 9, 10, 30, 32 and 33 recite a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service **without relying on either a client application and server application**.

The Examiner acknowledged that Matsuda fails to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for at least one of message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service **without relying on either a client application and server application**, as recited by claims 7, 9, 10, 30, 32 and 33.

The Office Action relies on Bell to allegedly make up for the deficiencies in Matsuda to arrive at the claimed features. The Applicants respectfully disagree.

Bell appears to disclose a system and method for communicating a private network signaling message over a packet network and bridges for communicating a MAC layer frame over an isochronous channel (See Bell, col. 1, lines 34-38). Moreover, an isochronous signaling frame can be communicated over a nonisochronous network (See Bell, col. 1, lines 39-40). Telephony

protocols and computer network protocols are cross-translated for packet based signaling (See Bell, col. 8, lines 38-46).

Thus, Bell discloses use of a computer network protocol. However, Bell simply discloses cross-translating a conventional computer network protocol to a telephony protocol. Bell fails to disclose or suggest a system and method that relieves burdens conventionally associated with client applications and servers applications executing TCP/IP services, i.e., relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client application and server application, as recited by claims 7, 9, 10, 30, 32 and 33

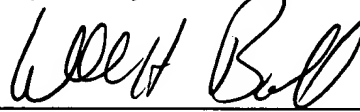
Thus, Matsuda in view of Bell would still fail to disclose or suggest a system and method relying on intelligent messaging network servers that use a transport protocol that provides for message segmentation and reassembly, message retries, message duplication detection, and message ACK and NACK service without relying on either a client application and server application, as recited by claims 7, 9, 10, 30, 32 and 33.

Accordingly, for at least all the above reasons, claims 7, 9, 10, 30, 32 and 33 are patentable over the prior art of record. It is therefore respectfully requested that the rejection be withdrawn.

**Conclusion**

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "William H. Bollman", written over a horizontal line.

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